IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Jail Appeal No.399/2002

Ramveer S/o Heerasingh
(at present in District Jail, Dholpur)
...Accused-Appellant
Versus
The State of Rajasthan through P.P.
Respondent

Date of Judgment :::: 10th of January, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri R.R. Baisla, Counsel for accused-appellant
Shri Arun Sharma, P.P., for the State
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By the Court:-

Heard learned counsel for the parties.

Accused-appellant Ramveer S/o Heerasingh has preferred this criminal appeal under Section 374 of the Code of Criminal Procedure, through Jailer, District Jail, Dholpur, against the judgment and order dated 28.11.2001 passed by the Additional District & Sessions Judge No.1 (Fast Track) Dholpur, in Sessions Case No.16A/2001, whereby the accused-appellant was convicted under Section 376, IPC, to ten years rigorous imprisonment and a fine of Rs.1000/- (Rupees one thousand), in default of payment of fine, to

further undergo two months rigorous imprisonment.

The learned counsel for the accused-appellant, Shri R.R. Baisla, argued the case on merits at length, but, during the course of arguments, in view of the statement of prosecutrix Geeta (PW-2) and her medical-report Exhibit P-7, statements of Dr. Anil Kumar (PW-9) and of prosecutrix's father Sultan (PW-1), did not press the appeal on merits and contended that accused-appellant is a young boy of 22 years of age and has already remained in judicial custody for about six years, therefore, his sentence of ten years rigorous imprisonment may be reduced to a period of six years rigorous imprisonment, already undergone by him.

The learned counsel for the State, on the other hand, contended that the judgment and order passed by the learned trial court is absolutely right and this is not a fit case for interference by this court.

I have heard the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the learned trial court.

A written-report was lodged by PW-1 Sultan Singh in respect of the incident dated 15th of February, 2001 and after registration of FIR the investigation was made in the case and challan was submitted against the accused, the learned trial court

framed the charge, which was denied and accused claimed to be tried.

The prosecution led oral and documentary evidence. Thereafter the statement of accused was recorded under Section 313 of the Code of Criminal Procedure, wherein he stated that he has falsely been implicated in the case. No evidence was produced in defence. The learned trial court, after considering the evidence on the record, convicted and sentenced the accused-appellant, as mentioned above.

I have considered the statements of prosecutrix Geeta (PW-2), Dr. Anil Kumar (PW-9) and Sultan Singh (PW-1), and also the medical-examination-report (Exhibit P-7) of the prosecutrix, and I am of the view that the learned counsel for the appellant is right in not pressing the appeal on merits.

So far as reduction of sentence of imprisonment from ten years rigorous imprisonment to a period of six years imprisonment, already undergone by the accused-appellant, is concerned, it is relevant to mention that in Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of

imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In State of Chhattisgarh Vs. Derha reported in Western Law Cases (SC) Criminal 2004 (2) Page 7, the Hon'ble Supreme Court reduced the sentence of accused in that case from ten years to seven years rigorous imprisonment under Section 376 (2)(f) of the IPC. Para No.8 of the judgment reads as under:-

> "8. The question then arises what should be the sentence that should be imposed on the accused. The trial court as stated above has sentenced the respondent for an offence under section 376(2)(F) to 10 years RI. We are told by learned counsel for the respondent that he was hardly 18 years of age at the time of the incident in question and has already served about 6½ years imprisonment consequent to the sentence imposed on him by the trial court. It is also submitted that he has since married and has a family. In such circumstances we think a sentence of 7 years RI would be appropriate in the facts and circumstances of the case. Hence while allowing the appeal of the State,

> setting aside the judgment of the High Court and restoring the conviction recorded by the trial court, we reduce the sentence to 7 years RI. We further direct that if the respondent has undergone any part of the sentence as submitted by learned counsel, set off shall be given for the said part of the sentence and he will also be entitled to any legal remission permissible in law for having served 6½ years' imprisonment."

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed, whereas under sub-section (2) of Section 376 IPC, the minimum sentence of ten years is prescribed. But, under both sub-sections (1) and (2) of Section 376 IPC the minimum sentence is subject to proviso that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years or ten years, as the case may be.

The accused-appellant was 21 years of age at the time of occurrence and he has already remained in custody for about six years, but looking to all the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in the above referred cases, I am not inclined to reduce the

sentence from ten years rigorous imprisonment to a period of six years imprisonment, already undergone by the accused-appellant, but after considering all the facts and circumstances of the case, I am inclined to reduce the sentence from ten years rigorous imprisonment to seven years rigorous imprisonment and a fine of Rs.1000/-, in default of payment of fine, to further undergo one month's rigorous imprisonment.

Consequently, the appeal is partly allowed. The conviction of accused-appellant under Section 376, IPC, is maintained, but his sentence is reduced from ten years rigorous imprisonment to seven years rigorous imprisonment and a fine of Rs.1000/- (Rupees one thousand only), in default of payment of fine, to further undergo one month's rigorous imprisonment.

(Narendra Kumar Jain) J.

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